

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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MARIA MALDANADO,  
Plaintiff,  
v.  
THE PICTSWEET CO.,  
Defendant.

CASE NO. 1:09-cv-01166-JDB-egb

Jury Trial Demanded

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DECLARATION OF STEPHANIE DAVIS

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I, Stephanie Davis, depose and state as follows:

1. I am an adult resident of the State of Tennessee, have personal knowledge of the facts contained herein, and am competent to testify to them.
2. I am currently employed by Defendant, The Pictsweet Company ("Pictsweet"), as the Human Resources Manager for Pictsweet's Bells, Tennessee, facility. I have held that position at all times relevant to this litigation.
3. Maria Maldanado ("Maldanado") was formerly employed at Pictsweet's Bells, Tennessee, facility as a Quality Control technician.
4. In the Spring of 2008, Maldanado provided the Human Resources department with a Certification of Health Care Provider, which Pictsweet approved. The Certification of Health Care Provider, dated April 17, 2008, stated that Maldanado's daughter suffers from a serious health condition and requires assistance with transportation to doctor's appointments. A copy of Maldanado's Family and Medical Leave Form is attached hereto as Sealed Exhibit A.

EXHIBIT

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5. Pictsweet's Attendance Guidelines, attached hereto as Exhibit B, outline the procedure that an employee must follow when she cannot report to work as scheduled. Under the Attendance Guidelines, “[e]mployees must notify the Human Resources Department at least one (1) hour in advance of their scheduled start time every day they are out except for scheduled vacation days.” Pictsweet implemented this notification procedure at its Bells, Tennessee, facility in October 2006, after it recognized a need for “centralized” reporting of unscheduled absences due to the relatively large number of supervisors working in that facility.

6. Prior to February 2, 2009, Maldanado followed the procedure set forth in the Attendance Guidelines and contacted Human Resources directly when she unexpectedly needed to take leave and could not work as scheduled.

7. Maldanado did not request the use of intermittent FMLA leave on February 2, 2009, in accordance with Pictsweet policy, nor was such a request granted.

8. Maldanado was scheduled to work on February 2, 2009. Pictsweet's Human Resources department received notification, through its time-keeping program, that Maldanado had not worked as scheduled. Maldanado never contacted Pictsweet's Human Resources department to notify the Company that she needed to take unforeseen leave that day and would not be able to work as scheduled. Accordingly, Human Resources properly classified Maldanado's absence as a “no call/no show.”

9. Per the Attendance Guidelines, Maldanado received 3.0 attendance points for her no call/no show on February 2, 2009. As a result of the no call/no show, Maldanado accumulated in excess of 10 attendance points, the maximum number of points allowed under the Attendance Guidelines. Maldanado was terminated, effective February 5, 2009, for exceeding the number of attendance points allowed by Pictsweet's policy.

10. On January 27, 2009, Pictsweet had notified Maldanado in writing that she had accumulated 7.5 attendance points and warned than an accumulation of 10 points would subject her to discharge. A copy of Maldanado's written notification is attached hereto as Exhibit C.

11. Pictsweet is without knowledge of the details surrounding any treatment received by Maldanado's daughter on February 2, 2009, or any recommendations made relating to her care for the remainder of that day.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed pursuant to 28 U.S.C. § 1746 on the 25 day of September, 2009.

Stephanie Davis  
STEPHANIE DAVIS

## ATTENDANCE GUIDELINES

The attendance policy in Pictsweet's employee handbook will be administered by the following guidelines. If there is any discrepancy between the handbook and these guidelines, the handbook will take precedence.

1. All employees are expected to report to work as scheduled and to work their scheduled hours and required overtime.
2. Employees must notify the Human Resources Department at least one (1) hour in advance of their scheduled start time every day they are out except for scheduled vacation days.

**Call-in phone numbers are listed below:**

Phone: 663-6437  
Phone: 663-6521  
Phone: 1-800-447-0204

If no one answers these numbers, please leave a message.

3. Absences for which employees will accumulate points are as follows:
  - a. Three (3) points for a no-call, no-show. A no-call, no-show is defined as not calling in or reporting to work within two hours after the scheduled start time. Three (3) no-call, no-shows in a twelve-month period will result in termination.
  - b. One and one-half (1 ½) points for calling in less than one (1) hour in advance of the scheduled start time.
  - c. One (1) point for any absence for any reason with the exception of vacation, funerals (up to three (3) days for immediate family, i.e. spouse, child, parent, brother, sister, grandparent, grandchild, parent-in-law), jury duty, military leave, FMLA or workers' compensation. An absence is defined as failure to show up for your shift or working less than four (4) hours.
  - d. One-fourth (1/4) point for taking more than thirty (30) minutes for lunch.
  - e. One-half (1/2) point for not clocking in or clocking out.
  - f. One-half (1/2) point for incomplete work shift.
  - g. One-half (1/2) point for being tardy. Tardy is defined as reporting to work up to two (2) hours after the scheduled start time. Reporting to work more than two (2) hours after the scheduled start time will result in one (1) point.
  - h. Hourly personnel will receive one-half (1/2) point for illness with a doctor's excuse. Any illness extending for more than one (1) consecutive day with a doctor's excuse shall be charged as one-half (1/2) point only.
  - i. If skilled personnel have accrued Sick Leave, they will receive zero (0) points for illness with a doctor's excuse, or one-half (1/2) point for illness without a doctor's excuse. If no Sick Leave is accrued, points will be administered as defined under item c and h.
  - j. One-half (1/2) point for court related absences that are not associated with company business. Proper documentation required.

**All points will be removed each March 1.**

4. New hires (60 days or less service) may be terminated upon accumulating 5 or more points.

When an employee has accumulated a total of five (5) points, he or she will be given a written notification. Seven (7) points will result in another written notification. When an employee accumulates ten (10) points he or she will be subject to discharge.

5. Employees who have perfect attendance for three (3) months are entitled to have two (2) points erased from their record.
6. Any employee discharged as a result of these guidelines will not be eligible for re-hire at any Pictsweet facility for one year.
7. All vacation days must be scheduled in writing in advance. All approved vacation forms will be kept in Human Resources.

Effective Date: 10/20/06

**EXHIBIT**

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B



THE PICTSWEET COMPANY

## 2<sup>nd</sup> WRITTEN WARNING

Employee: Maria Maldonado Date: 01/26/09  
Position: Quality Control Shift: 1st

In accordance with the Company's Attendance Guidelines, "Seven points will result in another written notification."

You have accumulated 7.5 points under the attendance guidelines. This warning includes incidents accumulated up through 01/21/09. A copy of your attendance record is attached.

To be an effective and contributing team member, employees must be at work and on time. You must improve your attendance or further disciplinary action will be taken. When an employee accumulates ten (10) points he or she will be subject to discharge.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee Signature: (Signature)

Date: 1-27-09

Supervisor Signature: (Signature)

Date: 1-27-09

Manager Signature: (Signature)

Date: 1-27-09

